

No. 75-679

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In the Supreme Court of the United States
OCTOBER TERM, 1975

INTERNAL REVENUE SERVICE, PETITIONER

v.

FRUEHAUF CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

ROBERT H. BORK,
Solicitor General,

SCOTT P. CRAMPTON,
Assistant Attorney General,

STUART A. SMITH,
*Assistant to the Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

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1. In opposing the petition for a writ of certiorari, respondents' principal argument is that their request under the Freedom of Information Act "concerns only documents relating to the interpretation of the manufacturers excise tax law and *not* income tax law" (Br. in Opp. 7, emphasis in original). However, for purposes of exemption 3 of the Freedom of Information Act which bars disclosure of "matters that are * * * specifically exempted from disclosure by statute," there is no difference between the excise tax letter rulings and technical advice memoranda sought by respondents and their counterparts under the income tax law. The principle of confidentiality embodied in Section 6103 of the Internal Revenue Code is all inclusive since it is "with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32 * * * ." See Section 6103(a)(2). Thus, there can be no doubt that this statutory bar against disclosure encompasses excise tax information in the custody of the Internal

Revenue Service as well as income tax information. Indeed, respondents' reliance (Br. in Opp. 6, 15) upon the holding of *Tax Analysts & Advocates v. Internal Revenue Service*, 505 F.2d 350 (C.A.D.C.), that *income tax* letter rulings are subject to disclosure under the Freedom of Information Act, belies their assertion that excise tax documents are to be governed by a different rule.¹

2. Contrary to respondents' further contention (Br. in Opp. 13), nothing in Section 1108(b) of the Revenue Act of 1926, 44 Stat. 9, 114, demonstrates that Congress intended that excise tax letter rulings were a body of law to be made generally available to third parties who could rely upon them in support of a particular tax result.² That provision, which originated as Section 1008(b) of the Revenue Act of 1924, 43 Stat. 253, 341, and which is still in force,³ states as follows:

No tax shall be levied, assessed or collected under the provisions of Title VI of this Act [the excise tax

¹However, in relying on *Tax Analysts & Advocates*, respondents avoid any discussion of the portion of that decision holding that technical advice memoranda are not covered by exemption 3. As we pointed out in our petition (pp. 7, 11-14), the decision below squarely conflicts with *Tax Analysts & Advocates* on this question.

²In urging that excise tax letter rulings are a body of law that should be made generally available, respondents assert (Br. in Opp. 8) that the importance of these rulings is underscored by the fact that excise tax controversies can only be litigated in refund suits, which are impractical where large deficiencies must be paid in full prior to suit. This is simply not the case. In *Flora v. United States*, 362 U.S. 145, 171, n. 37, this Court observed that excise tax deficiencies are divisible into a tax on each transaction or event, so that the "full payment" rule governing income, estate and gift tax refund suits would not be applicable to excise tax refund suits.

³See Section 12.07 of Rev. Rul. 54-172, 1954-1 Cum. Bull. 394, 401; and Statement of Procedural Rules, Section 601.201 (1)(8) (26 C.F.R.).

provisions] on any article sold or leased by the manufacturer, producer, or importer, if at the time of the sale or lease there was an existing ruling, regulation, or Treasury decision holding that the sale or lease of such article was not taxable, and the manufacturer, producer or importer parted with possession or ownership of such article, relying upon the ruling, regulation, or Treasury decision.

The legislative history underlying this statute indicates that it was enacted in response to a specific situation that had come to the attention of Congress where the Commissioner had published a particular excise tax ruling which advised manufacturers of certain automobile parts that they could obtain tax refunds if they passed the refund on to their customers. After many manufacturers refunded the taxes to their customers, the Commissioner revoked the ruling and ordered the taxes paid on these items within ten days. As a result, some manufacturers were unable to collect the tax again from their customers and were forced to suffer the financial detriment of paying the assessments themselves. See 65 Cong. Rec. 8116-8117 (1924).

It is therefore apparent that Section 1108(b) was only intended to address the situation where a manufacturer acts to his detriment by relying upon an excise tax ruling which was either issued to him or published by the Commissioner. Under these circumstances, the Service cannot collect excise taxes from such a manufacturer during the period in which a ruling issued to it is in force. Indeed, in *International Business Machines Corp. v. United States*, 343 F.2d 914, 921-922 (Ct. Cl.), certiorari denied, 382 U.S. 1028, upon which respondents rely (Br. in Opp. 12-13), the court noted the limited reach of the statute. See also *Cory Corp. v. Sauber*, 363 U.S. 709, 713, 717 (Frankfurter and Clark, J.J., dissenting). Thus, in enacting

Section 1108(b). Congress did not alter the well established principle that a letter ruling issued to one taxpayer is not binding on the Treasury with respect to other taxpayers. See, e.g., *Goodstein v. Commissioner*, 267 F.2d 127, 132 (C.A. 1); *Weller v. Commissioner*, 270 F.2d 294, 298-299 (C.A. 3), certiorari denied, 364 U.S. 908; *Minchin v. Commissioner*, 335 F.2d 30, 32-33 (C.A. 2); *Bornstein v. United States*, 345 F.2d 558, 564 (Ct. Cl.); *Knetsch v. United States*, 348 F.2d 932, 940 (Ct. Cl.), certiorari denied, 383 U.S. 957; *Bookwalter v. Brecklein*, 357 F.2d 78, 82-84 (C.A. 8); *Shakespeare Co. v. United States*, 389 F.2d 772, 777-778 (Ct. Cl.). See also *Dixon v. United States*, 381 U.S. 68, 71-73; *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180; *Helvering v. N.Y. Trust Co.*, 292 U.S. 455, 468. Accord: Statement of Procedural Rules, Section 601.201 (1)(1) (26 C.F.R.). The excise tax letter rulings issued to other taxpayers are therefore of no legal significance with respect to respondents' tax liability.

3. Finally, respondents argue (Br. in Opp. 14-15) that the submission of financial information to other federal agencies, such as the Department of Labor and the Securities and Exchange Commission, demonstrates that the data contained on a tax return is not confidential. However, the publication of such data by other federal agencies pursuant to their own statutory directives is irrelevant to this case. The critical fact is that in the absence of a specific statutory requirement that the agency publish such information, Section 6103 of the Internal Revenue Code bars its disclosure. Indeed, this was made clear by the three-judge district court in *Association of American Railroads v. United States*, 371 F. Supp. 114 (D. D.C.). While the court acknowledged in that case that the Interstate Commerce Commission had broad powers to require submission of financial data by public carriers,

it concluded that the Commission's statutory authority did not require the publication of such information and that Section 6103 of the Internal Revenue Code prohibited its publication. In so holding, the court stated in terms pointedly appropriate to this case (371 F. Supp. at 116):

The protection of the data contained in Federal tax returns is an essential part of our scheme of taxation. Individuals and corporations have the right to expect that information contained in tax returns will not be made available by the government to the public. The policy of confidentiality for income tax data encourages the full disclosure of income by taxpayers in that the individual or corporate taxpayer is assured that his neighbor or competitor will not be apprised of the intimate details of his financial life. [Footnote omitted.]

For the reasons stated above and in our petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

ROBERT H. BORK,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

STUART A. SMITH,
Assistant to the Solicitor General.

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